

114TH CONGRESS
1ST SESSION

S. 2063

To provide compensation to injured persons relating to the Gold King Mine spill, to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to address mining-related issues, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2015

Mr. UDALL (for himself, Mr. HEINRICH, and Mr. BENNET) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide compensation to injured persons relating to the Gold King Mine spill, to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to address mining-related issues, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Gold King Mine Spill
5 Recovery Act of 2015”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) on August 5, 2015, approximately
2 3,000,000 gallons of contaminated water was dis-
3 charged from the Gold King Mine north of Silverton,
4 Colorado, into Cement Creek, a tributary of the
5 Animas River, while contractors of the Environ-
6 mental Protection Agency were conducting an inves-
7 tigation of the mine—

8 (A) to assess the ongoing water releases
9 from the mine;

10 (B) to treat mine water; and
11 (C) to assess the feasibility of further mine
12 remediation;

13 (2) the plume of contaminated water resulting
14 from the discharge described in paragraph (1)—

15 (A) was found to contain high levels of
16 heavy metals, including aluminum, arsenic, cad-
17 mium, cobalt, copper, iron, lead, manganese,
18 mercury, molybdenum, nickel, and zinc; and

19 (B) flowed through the Animas River, the
20 San Juan River, and Lake Powell;

21 (3) as of the date of enactment of this Act, with
22 respect to the discharge described in paragraph
23 (1)—

24 (A) state of emergency declarations have
25 been made by—

11 SEC. 3. DEFINITIONS.

12 In this Act:

24 (3) INJURED PERSON.—The term “injured per-
25 son” means a person that—

1 (A) suffered injury resulting from the Gold
2 King Mine spill; and

3 (B) is—

4 (i) an individual, regardless of the
5 citizenship or alien status of the individual;

6 (ii) an Indian tribe, tribal corporation,
7 or other tribal organization;

8 (iii) a corporation, business, partnership,
9 company, association, insurer, county,
10 township, city, State or political subdivision
11 of a State, school district, ditch company,
12 special district, water district, water
13 company, the Animas-La Plata Operation,
14 Maintenance and Replacement Association,
15 or other non-Federal entity; or

16 (iv) a legal representative of an individual
17 or entity described in any of clauses
18 (i) through (iii).

19 (4) INJURY.—The term “injury” means any
20 damage to, or loss of, property, or a personal injury
21 or death, caused by a negligent or wrongful act or
22 omission of a Federal officer, employee, contractor,
23 or subcontractor while acting within the scope of office,
24 employment, or contract, under circumstances
25 in which the Federal officer, employee, contractor, or

1 subcontractor, if a private person, would be liable to
2 the claimant in accordance with the law of the juris-
3 diction in which the act or omission occurred.

4 (5) OFFICE.—The term “Office” means the Of-
5 fice of Gold King Mine Spill Claims established by
6 section 4(b)(1).

7 **SEC. 4. COMPENSATION FOR VICTIMS OF GOLD KING MINE**

8 **SPILL.**

9 (a) FEDERAL TORT CLAIMS.—

10 (1) IN GENERAL.—Subject to paragraph (4),
11 each injured person shall be entitled to receive from
12 the United States compensation for a claim filed, or
13 civil action brought, under chapter 171 of title 28,
14 United States Code (commonly known as the “Fed-
15 eral Tort Claims Act”), arising out of, or relating to,
16 an injury resulting from the Gold King Mine spill.

17 (2) EFFECT OF ACCEPTANCE.—The acceptance
18 by an injured person of compensation under para-
19 graph (1) shall have the same effect as acceptance
20 of compensation under chapter 171 of title 28,
21 United States Code (commonly known as the “Fed-
22 eral Tort Claims Act”), or any other Federal or
23 State law, arising out of or relating to the Gold
24 King Mine spill.

1 (3) REQUIREMENT.—The Administrator and
2 the Attorney General shall process a claim filed, or
3 civil action brought, pursuant to paragraph (1) as
4 expeditiously as practicable.

5 (4) NONAPPLICABILITY OF LIMITATION.—With
6 respect to any claim under this Act arising out of,
7 or relating to, an injury resulting from the Gold
8 King Mine spill—

9 (A) the maximum amount limitation on
10 claims described in the proviso of the first sen-
11 tence of section 2672 of title 28, United States
12 Code, shall be waived; and

13 (B) the Administrator may provide com-
14 pensation for the claim in an amount greater
15 than \$25,000 without prior written approval of
16 the Attorney General (or a designee), as the
17 Administrator determines to be appropriate.

18 (b) OFFICE OF GOLD KING MINE SPILL CLAIMS.—

19 (1) ESTABLISHMENT.—There is established
20 within the Environmental Protection Agency an Of-
21 fice of Gold King Mine Spill Claims.

22 (2) PURPOSE.—The Office shall receive, proc-
23 ess, and pay claims in accordance with this section.

24 (3) TREATMENT.—The establishment of the Of-
25 fice by this subsection shall not diminish the ability

1 of the Administrator to carry out the responsibilities
2 of the Environmental Protection Agency under any
3 other provision of law.

4 (4) DETAILEES.—On request of the Adminis-
5 trator, the head of any Federal department or agen-
6 cy may detail, on a reimbursable basis, any per-
7 sonnel of that department or agency to the Office to
8 assist in carrying out the duties under this Act.

9 (c) ALLOWABLE DAMAGES.—

10 (1) PROPERTY LOSS.—A claim that is paid for
11 loss of property under this section may include oth-
12 erwise-uncompensated damages resulting from the
13 Gold King Mine spill for—

14 (A) a cost resulting from lost tribal sub-
15 sistence from hunting, fishing, firewood gath-
16 ering, timbering, grazing, or agricultural activi-
17 ties, or from lost use for traditional or ceremo-
18 nial uses, conducted on land or water damaged
19 by the Gold King Mine spill;

20 (B) a cost of reforestation or revegetation
21 on tribal or non-Federal land, to the extent that
22 the cost of reforestation or revegetation is not
23 covered by any other Federal program;

24 (C) any costs borne by any injured person
25 to determine the extent of—

(i) the damages to agricultural land;

2

or

3 (ii) any other damages covered by this

4 Act;

(E) any other loss that the Administrator determines to be appropriate for inclusion as loss of property.

13 (2) BUSINESS LOSS.—A claim that is paid for
14 an injury under this section may include damages
15 resulting from the Gold King Mine spill for the fol-
16 lowing types of otherwise-uncompensated business
17 loss:

20 (B) Business interruption losses.

21 (C) Overhead costs.

22 (D) Employee wages for work not per-
23 formed.

(E) Any other loss that the Administrator determines to be appropriate for inclusion as a business loss.

9 (A) An insurance deductible.

10 (B) Lost wages or personal income.

11 (C) Emergency staffing expenses.

12 (D) Debris removal and other cleanup
13 costs.

14 (E) Any other loss that the Administrator
15 determines to be appropriate for inclusion as a
16 financial loss.

17 SEC. 5. LONG-TERM WATER QUALITY MONITORING PRO-
18 GRAM; SENSE OF CONGRESS.

19 (a) GOLD KING MINE SPILL RESPONSE PROGRAM.—

20 (1) IN GENERAL.—The Administrator shall

21 work with affected States and Indian tribes to de-

22 velop, fund, and implement a long-term monitoring

23 program for water quality of the Animas and San

24 Juan Rivers in response to the Gold King Mine spill.

1 (2) REQUIREMENT.—The program under para-
2 graph (1) shall provide—

3 (A) full disclosure to the public of applica-
4 ble water quality and sediment data; and

5 (B) a clear and meaningful comparison be-
6 tween those data and all relevant water quality
7 standards.

8 (b) SENSE OF CONGRESS.—It is the sense of Con-
9 gress that the Administrator should—

10 (1) consult with all local communities along the
11 Animas and San Juan Rivers affected by the Gold
12 King Mine spill, the Navajo Nation, the Southern
13 Ute Indian Tribe, and the States of Colorado and
14 New Mexico to determine whether it is appropriate
15 to seek a designation for the Upper Animas River
16 watershed on the National Priorities List under the
17 Comprehensive Environmental Response, Compensa-
18 tion, and Liability Act of 1980 (42 U.S.C. 9601 et
19 seq.); and

20 (2) prioritize the construction of a water treat-
21 ment plant in the Upper Animas River basin to sig-
22 nificantly reduce the ongoing heavy metal discharge
23 into the Animas River from Cement Creek.

1 **SEC. 6. AMENDMENT TO CERCLA.**

2 Title I of the Comprehensive Environmental Re-
3 sponse, Compensation, and Liability Act of 1980 (42
4 U.S.C. 9601 et seq.) is amended by adding at the end
5 the following:

6 **“SEC. 129. MINING-RELATED PROVISIONS.**

7 “(a) ASSESSMENTS.—The Administrator, the Sec-
8 retary of Agriculture, and the Secretary of the Interior,
9 in coordination with the Governors of affected States, the
10 heads of appropriate research universities, and the heads
11 of other relevant Federal departments and agencies,
12 shall—

13 “(1) not later than 180 days after the date of
14 enactment of this section, review known, existing
15 abandoned and inactive mines—

16 “(A) to identify the most dangerous aban-
17 doned and inactive mines on public land and
18 private land with respect to the existence of pol-
19 lution and the potential to release any haz-
20 ardous substance or other pollutant, particu-
21 larly with respect to contamination of water;
22 and

23 “(B) to establish a priority plan for activi-
24 ties for removal and remediation of the haz-
25 ardous substances and other pollutants;

1 “(2) periodically thereafter, as appropriate, up-
2 date the priority plan established under paragraph
3 (1)(B) as new information becomes available; and

4 “(3) develop a long term research initiative to
5 evaluate the physical, chemical, and geological at-
6 tributes of closed, abandoned, and inactive mines
7 and pursue technological developments to aid in the
8 cleanup of those mines.

9 “(b) ACTIONS PRIOR TO CERTAIN ACTIVITIES.—Be-
10 fore conducting any activity at a mine that presents the
11 significant potential for accidental discharge of a haz-
12 ardous substance or other pollutant, the Administrator or
13 the head of any other Federal department or agency car-
14 rying out an activity for mine remediation shall—

15 “(1) provide to each tribal, State, and local unit
16 of government the resources or residents of which
17 may be affected by such a discharge notice regard-
18 ing the activity; and

19 “(2) develop a spill prevention, control, and
20 countermeasures plan to avoid and mitigate the im-
21 pacts of such a discharge.”.

22 **SEC. 7. EFFECT OF ACT.**

23 Nothing in this Act (or an amendment made by this
24 Act) provides for compensation of any injured person pur-
25 suant to this Act (or an amendment made by this Act)

- 1 from the Hazardous Substances Superfund established by
- 2 section 9507(a) of the Internal Revenue Code of 1986.

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